

LETTERS TO THE EDITOR

Is RJR Still Going After the "Kiddie" Market?

Dr. Arnett's study about a major advertising campaign for Winston cigarettes [Public Health Rep 1999;114: 522-7] should be read in the context of what R. J. Reynolds Tobacco Co. (RJR) is doing to evade regulatory constraints on its behavior. RJR has joined with the other major cigarette manufacturers in opposing FDA regulation. One of their key legal arguments is that they do not make health claims as to the cigarettes they place into the stream of commerce.

The Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.*, confers authority on the Secretary of Health and Human Services, through the FDA, to regulate "drugs" and "devices" for the purpose of protecting the public health. The Act defines "drugs" as, *inter alia*, "articles (other than food) intended to affect the structure or any function of the body of man or other animal."¹ RJR argues that "intended to affect" is patterned after the phrase "intended for use," which is a "term of art, to which administrative and judicial interpretation has given a special meaning, different from the dictionary definitions of its separate words..." (RJR brief, submitted September 10, 1999, at 12). Thus, RJR continues, a manufacturer can "determine," not merely influence, its product's intended use through "representations in connection with...sale" (RJR brief at 13).

While RJR's lawyers were engaged in the legal battle over FDA authority and claiming that the industry was not making health claims about cigarettes, over in the advertising and marketing departments the company was doing something else indeed. As Dr. Arnett's study shows, the new Winston "No Bull" advertising campaign was delivering health claims, albeit implied

rather than explicit, to consumers. As he notes, "Perhaps most disturbing, the results of this study suggest that 'No Additives' is especially likely to deceive adolescents. Two-thirds of the adolescents in this study perceived 'No Additives' as meaning one or more of the following: that Winston cigarettes are healthier than other cigarettes, less likely to harm health, or less addictive."

Of course, making health claims for deadly products isn't RJR's only sleazy marketing strategy. RJR's infamous Joe Camel campaign targeted young people.² Indeed, the FDA found that "previously confidential RJR documents provide convincing evidence of the company's intention to attract young smokers and so-called pre-smokers to its Camel brand."³ As part of the tobacco industry's November 1998 settlement with 46 states, RJR agreed to abandon Joe Camel and refrain from other strategies designed to target young people. But a year later they are apparently back at it. After the company sent out free samples of cigarettes through the mail, Arizona Attorney General Janet Napolitano said that RJR's action could violate the multistate settlement agreement because the cigarettes could end up in the hands of children. "These are thinly disguised efforts to target youth—to get kids who may pick them up in the mail first to get them to start smoking," Napolitano told the Associated Press in early December.⁴ The *Arizona Daily Star* editorialized that "Napolitano is responding with proper indignation to an act that she rightly believes targets children. News accounts told the story of children who played with the cigarettes after retrieving the mail. Other recipients included former smokers who quit because their health demanded it. And Napolitano had the same

thought as the rest of us when she read the literature accompanying the cigarettes. Two and four packs of cigarettes were introduced with a survey that suggested recipients 'smoke enough of the cigarettes to form an opinion.' Napolitano said the cigarette company probably meant 'to form an addiction.'"⁵

The most recent revelation of RJR's underhanded marketing tactics concerned its involvement in massive smuggling of cigarettes into Canada in the early 1990s. In December 1999, following the sentencing of an executive of a Reynolds subsidiary to 70 months in prison for his role in the smuggling, the Canadian government filed a billion-dollar suit in the United States to recover not only its lost tax revenue but also damages to its public health system when it was forced to roll back its high cigarette taxes in order to combat the smuggling.

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2. Fischer PM, Schwartz MP, Richards JW Jr, Goldstein AO, Rojas TH. Brand logo recognition by children aged 3 to 6 years. *JAMA* 266:3145-8.
3. Food and Drug Administration (US). Regulations restricting the sale and distributions of cigarettes and smokeless tobacco to protect children and adolescents. *Fed Regist* 1996;61:44396 at 44480.
4. Reynolds under fire for sample smokes. *Richmond Times-Dispatch* 1999 Dec 2;Sect. B:11.
5. R.J. Reynolds' offensive act. *Arizona Daily Star* 1999 Dec 10. ■